

CHAPTER 141

GOVERNMENT - STATE

SENATE BILL 20-218

BY SENATOR(S) Fenberg and Lee, Bridges, Danielson, Donovan, Ginal, Gonzales, Hansen, Moreno, Pettersen, Story, Todd, Winter;
also REPRESENTATIVE(S) Singer and McKean, Arndt, Bird, Buentello, Cutter, Duran, Exum, Froelich, Herod, Hooton, Jackson, Jaquez Lewis, Kipp, Lontine, McLachlan, Mullica, Sirota, Snyder, Titone, Valdez A., Weissman, Williams D., Woodrow, Young.

AN ACT

CONCERNING MEASURES BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT TO PROTECT THE PUBLIC FROM CERTAIN HAZARDOUS SUBSTANCES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 8-20-206.5, **add** (6) and (7) as follows:

8-20-206.5. Environmental response surcharge - liquefied petroleum gas and natural gas inspection fund - perfluoroalkyl and polyfluoroalkyl substances cash fund - definitions. (6) (a) **IN ADDITION TO THE PAYMENT COLLECTED UNDER SUBSECTION (1)(a) OF THIS SECTION, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL ALSO COLLECT A FEE TO:**

(I) **FUND THE PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES CASH FUND;**

(II) **SUPPORT THE DEPARTMENT OF TRANSPORTATION IN FUNCTIONS RELATED TO FREIGHT MOVEMENT AND INFRASTRUCTURE IN THE STATE AS WELL AS INFRASTRUCTURE PROJECTS THAT ENHANCE THE SAFETY OF MOVEMENT OF COMMERCIAL MATERIALS;**

(III) **SUPPORT THE COLORADO STATE PATROL IN REGULATING HAZARDOUS MATERIALS ON HIGHWAYS IN THE STATE; AND**

(IV) **PAY THE COSTS TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING THE**

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

FEE.

(b) ON AND AFTER SEPTEMBER 1, 2020, BUT BEFORE SEPTEMBER 1, 2026, EVERY MANUFACTURER OF FUEL PRODUCTS WHO MANUFACTURES SUCH PRODUCTS FOR SALE WITHIN COLORADO OR WHO SHIPS SUCH PRODUCTS FROM ANY POINT OUTSIDE OF COLORADO TO A DISTRIBUTOR WITHIN COLORADO AND EVERY DISTRIBUTOR WHO SHIPS SUCH PRODUCTS FROM ANY POINT OUTSIDE OF COLORADO TO A POINT WITHIN COLORADO SHALL PAY TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE, EACH CALENDAR MONTH, TWENTY-FIVE DOLLARS PER TANK TRUCKLOAD OF FUEL PRODUCTS DELIVERED DURING THE PREVIOUS CALENDAR MONTH FOR SALE OR USE IN COLORADO. THIS SECTION DOES NOT APPLY TO FUEL THAT IS USED IN AVIATION OR TO ODORIZED LIQUEFIED PETROLEUM GAS AND NATURAL GAS.

(c) ON AND AFTER SEPTEMBER 1, 2020, BUT BEFORE OCTOBER 1, 2021, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL TRANSMIT ANY FEE COLLECTED IN ACCORDANCE WITH THIS SUBSECTION (6) TO THE STATE TREASURER, WHO SHALL CREDIT:

(I) FIFTY PERCENT, MINUS THE COSTS TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING THE FEE, TO THE PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES CASH FUND;

(II) TWENTY-FIVE PERCENT, MINUS THE COSTS TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING THE FEE, TO THE DEPARTMENT OF TRANSPORTATION TO SUPPORT FUNCTIONS RELATED TO THE ADMINISTRATION OF HAZARDOUS MATERIALS AND SAFE AND EFFICIENT FREIGHT MOVEMENT AND INFRASTRUCTURE IN THE STATE AS WELL AS SUPPORTING INFRASTRUCTURE PROJECTS THAT ENHANCE THE SAFETY OF MOVEMENT OF FREIGHT AND HAZARDOUS MATERIALS;

(III) TWENTY-FIVE PERCENT, MINUS THE COSTS TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING THE FEE, TO THE DEPARTMENT OF PUBLIC SAFETY FOR USE BY THE COLORADO STATE PATROL TO SUPPORT THE REGULATION OF HAZARDOUS MATERIALS ON HIGHWAYS IN THE STATE; AND

(IV) THE COSTS TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING THE FEE.

(d) ON AND AFTER OCTOBER 1, 2021, BUT BEFORE OCTOBER 1, 2026, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL TRANSMIT ANY FEE COLLECTED IN ACCORDANCE WITH THIS SUBSECTION (6) TO THE STATE TREASURER, WHO SHALL CREDIT:

(I) ONE HUNDRED THOUSAND DOLLARS TO THE DEPARTMENT OF PUBLIC SAFETY FOR USE BY THE COLORADO STATE PATROL TO SUPPORT THE REGULATION OF HAZARDOUS MATERIALS ON HIGHWAYS IN THE STATE;

(II) SEVENTY-FIVE PERCENT OF THE AMOUNT REMAINING, MINUS THE COSTS TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING THE FEE, TO THE PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES CASH FUND;

(III) TWENTY-FIVE PERCENT OF THE AMOUNT REMAINING, MINUS THE COSTS TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING THE FEE, TO THE DEPARTMENT

OF TRANSPORTATION TO SUPPORT FUNCTIONS RELATED TO THE ADMINISTRATION OF HAZARDOUS MATERIALS AND SAFE AND EFFICIENT FREIGHT MOVEMENT AND INFRASTRUCTURE IN THE STATE AS WELL AS SUPPORTING INFRASTRUCTURE PROJECTS THAT ENHANCE THE SAFETY OF MOVEMENT OF FREIGHT AND HAZARDOUS MATERIALS; AND

(IV) THE COSTS TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING THE FEE.

(e) NOTWITHSTANDING SUBSECTION (6)(b) OF THIS SECTION, IF THE AVAILABLE FUND BALANCE IN THE PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES CASH FUND IS GREATER THAN EIGHT MILLION DOLLARS, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL NOT COLLECT THE FEE DESCRIBED IN SUBSECTION (6)(b) OF THIS SECTION, BUT IF THE AVAILABLE BALANCE IN THE FUND IS LESS THAN EIGHT MILLION DOLLARS WITHIN A FISCAL YEAR, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL IMPOSE A FEE IN ACCORDANCE WITH SUBSECTION (6)(b) OF THIS SECTION.

(f) AS USED IN THIS SUBSECTION (6), "FUEL PRODUCTS" MEANS ALL GASOLINE; DIESEL; BIODIESEL; BIODIESEL BLENDS; KEROSENE; AND ALL ALCOHOL BLENDED FUELS THAT ARE PRODUCED, COMPOUNDED, AND OFFERED FOR SALE OR USED FOR THE PURPOSE OF GENERATING HEAT, LIGHT, OR POWER IN INTERNAL COMBUSTION ENGINES OR FUEL CELLS, FOR CLEANING, OR FOR ANY OTHER SIMILAR USAGE. "FUEL PRODUCTS" DOES NOT MEAN FUEL THAT IS USED IN AVIATION OR ODORIZED LIQUEFIED PETROLEUM GAS AND NATURAL GAS.

(7) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES CASH FUND, REFERRED TO IN THIS SUBSECTION (7) AS THE "FUND". THE FUND CONSISTS OF MONEY CREDITED TO THE FUND PURSUANT TO SUBSECTION (6) OF THIS SECTION AND ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND.

(b) THE MONEY IN THE FUND SHALL NOT BE DEPOSITED IN OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEY IN THE FUND SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

(c) MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED FOR COSTS RELATED TO:

(I) ADMINISTERING THE PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES GRANT PROGRAM AND AWARDING GRANTS IN ACCORDANCE WITH SECTION 25-5-1310;

(II) ADMINISTERING THE PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES TAKEBACK PROGRAM AND PURCHASING AND DISPOSING OF ELIGIBLE MATERIALS UNDER THE TAKEBACK PROGRAM IN ACCORDANCE WITH SECTION 25-5-1311; AND

(III) PROVIDING TECHNICAL ASSISTANCE IN LOCATING AND STUDYING

PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES TO COMMUNITIES, STAKEHOLDERS, AND REGULATORY BOARDS OR COMMISSIONS FOR THE FOLLOWING PURPOSES:

(A) DEVELOPING GUIDANCE AND RECOMMENDATIONS REGARDING HUMAN HEALTH-BASED STANDARDS FOR PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES IN WATER OR OTHER MEDIA; AND

(B) IDENTIFYING SAFE DISPOSAL METHODS OF MATERIALS CONTAINING PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES.

SECTION 2. In Colorado Revised Statutes, 25-5-1302, **add** (3.3), (3.5), (3.7), (5.5), (5.7), and (8) as follows:

25-5-1302. Definitions. As used in this part 13, unless the context otherwise requires:

(3.3) "ELIGIBLE ENTITY" MEANS AN ENTITY IDENTIFIED BY THE DEPARTMENT AS AN ENTITY THAT MAY QUALIFY FOR THE GRANT PROGRAM.

(3.5) "ELIGIBLE MATERIAL" MEANS A MATERIAL CONTAINING PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES THAT IS IDENTIFIED BY THE DEPARTMENT AS ELIGIBLE FOR PURCHASE UNDER THE TAKEBACK PROGRAM.

(3.7) "FEES" MEANS THE FEES IMPOSED BY SECTION 8-20-206.5 (6).

(5.5) "FUND" MEANS THE PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES CASH FUND CREATED IN SECTION 8-20-206.5 (7).

(5.7) "GRANT PROGRAM" MEANS THE PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES GRANT PROGRAM CREATED SECTION 25-5-1310.

(8) "TAKEBACK PROGRAM" MEANS THE PROGRAM CREATED IN SECTION 25-5-1311 THAT ALLOWS THE DEPARTMENT TO PURCHASE AND DISPOSE OF MATERIALS THAT CONTAIN PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES.

SECTION 3. In Colorado Revised Statutes, **add** 25-5-1310, 25-5-1311, and 25-5-1312 as follows:

25-5-1310. Perfluoroalkyl and polyfluoroalkyl substances grant program.

(1) THERE IS HEREBY CREATED WITHIN THE DEPARTMENT THE PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES GRANT PROGRAM.

(2) GRANT RECIPIENTS MAY USE THE MONEY RECEIVED THROUGH THE GRANT PROGRAM FOR THE FOLLOWING PURPOSES:

(a) SAMPLING, ASSESSMENT, AND INVESTIGATION OF PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES IN GROUND OR SURFACE WATER;

(b) FUNDING WATER SYSTEM INFRASTRUCTURE USED FOR THE TREATMENT OF IDENTIFIED PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES; AND

(c) PROVIDING EMERGENCY ASSISTANCE TO COMMUNITIES AND WATER SYSTEMS AFFECTED BY PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES.

(3) THE DEPARTMENT SHALL ADMINISTER THE GRANT PROGRAM AND SHALL AWARD GRANTS AS PROVIDED IN THIS SECTION. SUBJECT TO AVAILABLE APPROPRIATIONS, GRANTS SHALL BE PAID OUT OF THE FUND.

(4) THE DEPARTMENT SHALL DEVELOP POLICIES AND PROCEDURES AS NECESSARY TO IMPLEMENT THE GRANT PROGRAM. AT A MINIMUM, THESE POLICIES AND PROCEDURES MUST SPECIFY:

- (a) WHO MAY QUALIFY AS AN ELIGIBLE ENTITY;
- (b) THE TIME FRAMES FOR APPLYING FOR GRANTS;
- (c) THE CRITERIA USED TO EVALUATE AND PRIORITIZE APPLICATIONS FOR GRANTS;
- (d) THE FORM OF THE GRANT PROGRAM APPLICATION; AND
- (e) THE TIME FRAMES FOR DISTRIBUTING GRANT MONEY.

(5) TO RECEIVE A GRANT, AN ELIGIBLE ENTITY MUST SUBMIT AN APPLICATION TO THE DEPARTMENT IN ACCORDANCE WITH THE POLICIES AND PROCEDURES SPECIFIED BY THE DEPARTMENT.

(6) A GRANTEE SHALL USE THE MONEY RECEIVED THROUGH THE GRANT PROGRAM ONLY FOR ACHIEVING GOALS APPROVED BY THE DEPARTMENT.

(7) A GRANTEE SHALL REPORT ANNUALLY TO THE DEPARTMENT ON THE PROGRESS OF ANY PROJECT FINANCED BY THE GRANT PURSUANT TO TERMS SPECIFIED IN THE GRANT AWARD AGREEMENT.

(8) THE DEPARTMENT SHALL DEVELOP A POLICY REGARDING A GRANTEE'S NONCOMPLIANCE WITH THE GRANT AWARD AGREEMENT ENTERED INTO BY THE GRANTEE AND THE DEPARTMENT. THIS POLICY MAY INCLUDE A MECHANISM FOR THE DEPARTMENT TO CONVERT THE GRANT TO A LOAN WITH INTEREST.

25-5-1311. Perfluoroalkyl and polyfluoroalkyl substances takeback program.

(1) THERE IS HEREBY CREATED IN THE DEPARTMENT THE PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES TAKEBACK PROGRAM TO CREATE AN INCENTIVE FOR THE PROPER DISPOSAL OF MATERIALS CONTAINING PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES BY ALLOWING THE DEPARTMENT TO PURCHASE AND PROPERLY DISPOSE OF SUCH MATERIALS.

(2) THE DEPARTMENT SHALL ADMINISTER THE TAKEBACK PROGRAM AND, SUBJECT TO AVAILABLE APPROPRIATIONS AND REVENUES FROM THE FUND, SHALL PURCHASE AND DISPOSE OF ELIGIBLE MATERIALS.

(3) THE DEPARTMENT SHALL DEVELOP POLICIES AND PROCEDURES AS NECESSARY TO IMPLEMENT THE TAKEBACK PROGRAM. AT A MINIMUM, THESE POLICIES AND PROCEDURES MUST DESCRIBE:

- (a) WHAT MATERIALS QUALIFY AS ELIGIBLE MATERIALS;
- (b) THE PURCHASE PRICE FOR EACH ELIGIBLE MATERIAL;
- (c) THE PROPER METHOD OF DISPOSAL FOR EACH ELIGIBLE MATERIAL;
- (d) THE TIME FRAME FOR APPLYING FOR THE PURCHASE OF ELIGIBLE MATERIALS;
- (e) THE FORM OF THE ELIGIBLE MATERIAL PURCHASE APPLICATION; AND
- (f) THE TIME FRAME FOR PURCHASING ELIGIBLE MATERIALS.

(4) TO HAVE THE DEPARTMENT PURCHASE AN ELIGIBLE MATERIAL, A PERSON OR ENTITY MUST SUBMIT AN ELIGIBLE MATERIAL PURCHASE APPLICATION TO THE DEPARTMENT IN ACCORDANCE WITH THE POLICIES AND PROCEDURES ADOPTED BY THE DEPARTMENT.

(5) THE DEPARTMENT SHALL PUBLISH THE PURCHASE PRICE FOR EACH ELIGIBLE MATERIAL.

25-5-1312. Reporting requirement. (1) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE DEPARTMENT SHALL ANNUALLY REPORT BY FEBRUARY 1, 2021, AND FEBRUARY 1 OF EACH YEAR UNTIL FEBRUARY 1, 2027, TO THE GENERAL ASSEMBLY'S COMMITTEES OF REFERENCE WITH JURISDICTION OVER PUBLIC HEALTH REGARDING:

(a) ANY AMOUNTS CREDITED TO THE FUND IN THE PREVIOUS YEAR AND THE UNOBLIGATED BALANCE OF THE FUND;

(b) THE NUMBER OF GRANT APPLICANTS AND THE NUMBER AND VALUE OF GRANTS AWARDED UNDER THE GRANT PROGRAM;

(c) THE ELIGIBLE ENTITIES THAT HAVE APPLIED FOR A GRANT UNDER THE DEPARTMENT THE GRANT PROGRAM, THE ACTIONS TAKEN BY EACH GRANTEE, OTHER MEASUREMENTS OF SUCCESS, AND THE AMOUNT OF GRANT MONEY DISTRIBUTED TO EACH GRANTEE;

(d) THE AMOUNT OF ELIGIBLE MATERIALS PURCHASED AND PROPERLY DISPOSED OF BY THE DEPARTMENT UNDER THE TAKEBACK PROGRAM;

(e) ANY NEWLY LOCATED PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES; AND

(f) ANY SUGGESTED LEGISLATION OR POLICY CHANGES.

SECTION 4. In Colorado Revised Statutes, 25-7-122, **amend** (1) introductory portion; and **add** (1)(f), (1)(g), and (1)(h) as follows:

25-7-122. Civil penalties. (1) Upon application of the division, penalties as determined under this ~~article~~ ARTICLE 7 may be collected by the division by action instituted in the district court for the district in which is located the air pollution source affected in accordance with the following provisions:

(f) ANY PERSON WHO OWNS OR OPERATES STORAGE TANKS AT A GASOLINE DISPENSING FACILITY, AS DEFINED BY REGULATIONS PROMULGATED BY THE AIR QUALITY CONTROL COMMISSION, WHO VIOLATES ANY REQUIREMENT TO MAINTAIN A VAPOR COLLECTION SYSTEM PURSUANT TO AIR QUALITY CONTROL REGULATIONS SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIFTEEN THOUSAND DOLLARS PER DAY FOR EACH DAY OF SUCH A VIOLATION.

(g) ANY PERSON WHO OWNS OR OPERATES A GASOLINE DISPENSING FACILITY, AS DEFINED BY REGULATIONS PROMULGATED BY THE AIR QUALITY CONTROL COMMISSION, WHO VIOLATES ANY REQUIREMENT TO MAINTAIN RECORDS REQUIRED PURSUANT TO AIR QUALITY CONTROL COMMISSION REGULATIONS AND THE AIR POLLUTION CONTROL DIVISION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS. FOR A SECOND VIOLATION, THE CIVIL PENALTY SHALL BE NOT MORE THAN TEN THOUSAND DOLLARS. FOR A THIRD OR SUBSEQUENT VIOLATION, THE CIVIL PENALTY SHALL BE NOT MORE THAN FIFTEEN THOUSAND DOLLARS.

(h) THE DIVISION, IN CONSULTATION WITH STAKEHOLDERS FROM GASOLINE DISPENSING FACILITIES AND GASOLINE TRANSPORT TRUCK COMPANIES, AS DEFINED BY REGULATIONS PROMULGATED BY THE AIR QUALITY CONTROL COMMISSION, SHALL DEVELOP DESIGN, OPERATION, AND MAINTENANCE GUIDELINES BY JUNE 30, 2021. THE GUIDELINES WILL ASSIST OWNERS AND OPERATORS OF GASOLINE DISPENSING FACILITIES AND GASOLINE TRANSPORT TRUCKS IN COMPLYING WITH THE REQUIREMENTS OF AIR QUALITY CONTROL COMMISSION REGULATIONS.

SECTION 5. Appropriation. (1) For the 2020-21 state fiscal year, \$39,769 is appropriated to the department of revenue. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

- (a) \$24,750 for tax administration IT system (GenTax) support;
- (b) \$12,600 for use by the taxation and compliance division for personal services; and
- (c) \$2,419 for use by the taxpayer service division for the fuel tracking system.

(2) For the 2020-21 state fiscal year, \$1,552,558 is appropriated to the department of public safety for use by the Colorado state patrol. This appropriation is from the hazardous materials safety fund created in section 42-20-107 (1), C.R.S. To implement this act, the Colorado state patrol may use this appropriation for the hazardous materials safety program.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 29, 2020